JUL 24 2002

No. 01-1015

In The Supreme Court of the United States

VICTOR MOSELEY and CATHY MOSELEY,
d/b/a VICTOR'S LITTLE SECRET,

Petitioners,

v.

V SECRET CATALOGUE, INC.,
VICTORIA'S SECRET STORES, INC., and
VICTORIA'S SECRET DIRECT, LLC,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

JOINT APPENDIX
VOL. II, PAGES 133 to 211

JAMES R. HIGGINS, JR.
Counsel of Record
SCOT A. DUVALL
MIDDLETON REUTLINGER
2500 Brown & Williamson Tower
Louisville, KY 40202
(502) 584-1135

Attorneys for Petitioners

FRANK J. COLUCCI
Counsel of Record
W. BRANT MOSSOP
COLUCCI & UMANS
Manhattan Tower
101 East 52nd Street
New York, NY 10022
(212) 935-5700

Attorneys for Respondents

Petition For Certiorari Filed January 2, 2002
Certiorari Granted April 15, 2002

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

[JOINT APPENDIX]

TABLE OF CONTENTS

VOLUME I

Page

Relevant Docket Entries 1

Cease and Desist Letter addressed to Victor Moseley from Respondents' counsel, dated February 25, 1998 [Complaint, Exhibit B] 11

Follow up letter addressed to Victor Moseley from Respondents' counsel, dated March 20, 1998 [Complaint, Exhibit C] 13

Complaint, dated June 22, 1998 15

Answer, dated August 4, 1998 29

Excerpts from deposition of Victor Moseley, taken October 29, 1998 36

Excerpts from deposition of Cathy Moseley, taken October 29, 1998 81

Defendants' Answers to Plaintiffs' First Set of Interrogatories, dated November 2, 1998 86

Excerpts from deposition of Timothy Lyons, taken December 8, 1998 96

Excerpts from deposition of James McGinty, taken December 8, 1998 106

Excerpts from deposition of Jill Beraud, taken December 14, 1998 113

Exhibits to Defendants' Motion for Summary Judgment, dated April 19, 1999:

Inventory list for "Victor's Little Secret" 125

TABLE OF CONTENTS – Continued

Page

Affidavit of Victor Moseley, dated April 14, 1999 129

Memorandum Opinion and Order of the United States District Court for the Western District of Kentucky granting Respondents' Cross-Motion for Summary Judgment on the FTDA claim, and granting Petitioners' Motion for Summary Judgment on all other claims, entered February 9, 2000 ..... Pet. App. 28a-42a

Opinion of the United States Court Of Appeals for the Sixth Circuit, filed July 30, 2001.....Pet. App. 1a-27a

Order of United States Court Of Appeals for the Sixth Circuit denying Petitioners' timely Petition for Rehearing and Suggestion for Rehearing En Banc, filed October 4, 2001 ..... Pet. App. 43a

VOLUME II

Affidavits and Exhibits submitted with Plaintiffs' Cross-Motion for Summary Judgment, dated May 7, 1999:

Affidavit of Timothy B. Lyons, dated April 30, 1999.....133

Exhibit 1 (U.S. Reg. No. 1,146,199).....138

Exhibit 2 (U.S. Reg. No. 1,179,309).....139

Exhibit 3 (U.S. Reg. No. 1,224,782).....140

Exhibit 4 (U.S. Reg. No. 1,908,042).....141

Exhibit 5 (Copy of Women's Wear Daily article).....142

Exhibit 6 (Color copies of merchandise sold by Victor's Little Secret) 145

TABLE OF CONTENTS – Continued

Page

Affidavit of James J. McGinty, dated April 30, 1999.....165

[The following exhibits are not reproduced in the Joint Appendix but are available in the Record at R.33:]

Exhibit 7 (Color copies of Victoria's Secret hang tags)

Exhibit 8 (Color copies of magazine articles concerning Victoria's Secret)

Exhibit 9 (LEXIS/NEXIS printout)

Affidavit of James Pozy, dated May 4, 1999 174

[The following exhibits are not reproduced in the Joint Appendix but are available in the Record at R.33:]

Exhibit 10 (Printout of Victoria's Secret website)

Exhibit 11 (Color copy of Victoria's Secret mailing label)

Exhibit 12 (Table: Sales/Advertising of Victoria's Secret catalogue)

Affidavit of Frank J. Colucci, dated May 6, 1999 184

Exhibit 13 (February 12, 1998 facsimile from Col. John Baker) 188

Exhibit 14 (February 25, 1998 cease and desist letter addressed to Victor Moseley from Plaintiffs' counsel).....190

Exhibit 15 (March 20, 1998 follow up letter addressed to Victor Moseley from Plaintiffs' counsel).....192

TABLE OF CONTENTS – Continued

Page

Affidavit of Scott D. Johnson, Ph.D., dated May 6, 1999.....195

Affidavit of Colonel John E. Baker, dated April 9, 1999.....208

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

- -x

V SECRET CATALOGUE, INC.
VICTORIA'S SECRET STORES, INC. and
VICTORIA'S SECRET CATALOGUE, INC.,

Plaintiffs,

v.

VICTOR MOSELEY and
CATHY MOSELEY
d/b/a VICTOR'S LITTLE SECRET
(formerly VICTOR'S SECRET),

Defendants.

Civil Action
No. 3:09cv-395-S
(Charles R. Simpson, C.J.)

- -x

AFFIDAVIT OF TIMOTHY B. LYONS

STATE OF OHIO)
: ss.:
COUNTY OF FRANKLIN)

TIMOTHY B. LYONS, being duly sworn, deposes and says:

1. Since 1983, I have been employed by Limited Service Corporation as Vice President, Tax. As such, I oversee The Limited, Inc.'s tax department, which is responsible for compliance, income taxes and sales tax. I also serve as Vice President and as a member of the Board of Directors of V Secret Catalogue, Inc., a plaintiff in this case. In my capacity as a Board member, I monitor the use of our trademarks and serve as legal liaison for V Secret Catalogue. I also serve as Secretary of the Board of Victoria's Secret Catalogue, Inc., also a plaintiff in

this case.

2. As a result of the above, I am fully familiar with the facts hereinafter set forth of my personal knowledge.

3. V Secret Catalogue, Inc. is the record owner of the VICTORIA'S SECRET Mark, which is registered in the United States Patent and Trademark Office, inter alia, as follows:

Registration No.	Issued	Goods
1,146, 199	1/20/81	Women's Lingerie in Class 25
1,179,309	11/24/81	Women's Lingerie and Underwear in Class 25; Retail Stores Services in Class 42
1,224,782	1/25/83	Cosmetics and Cleaning Preparations in Class 3.
1,908,042	8/1/95	Personal Care Products in Class 3; Candles in Class 4; Prerecorded Compact Discs and Audio Tapes featuring Music in Class 9; Mail Order Catalogs in Class 16; Picture Frames, Hand Mirrors and Pillows in Class 20; Perfumes in Class 21; Lingerie Bags in Class 22; Wash Cloths, Towels and Bedding in Class 24; Clothing in Class 25; Stuffed Toys in Class 28; and Retail Stores Services In Class 42.

True and accurate copies of said registrations are annexed hereto and incorporated herein by reference as Plaintiffs' Exhibits 1-4.

4. The aforesaid registrations are valid and in full

force and effect, and V Secret is the record owner thereof. Registration Nos. 1,146,199, 1,179,309 and 1,224,782 are also incontestable.

5. V Secret Catalogue, Inc. licenses plaintiff, Victoria's Secret Stores, Inc., to use the VICTORIA'S SECRET Mark on and in connection with the name of its retail stores and the merchandise which it offers for sale and sells in its VICTORIA'S SECRET stores throughout the United States.

6. V Secret Catalogue, Inc. also licenses plaintiff, Victoria's Secret Catalogue, LLC (formerly Victoria's Secret Catalogue, Inc.) to use the VICTORIA'S SECRET Mark on and in connection with the name of its catalog and the merchandise which it offers for sale and sells in its VICTORIA'S SECRET catalog which is distributed nationally as well as internationally.

(Hereinafter, plaintiffs, Victoria's Secret Stores, Inc., V Secret Catalogue, Inc. and Victoria's Secret Catalogue, LLC shall be collectively referred to as "Victoria's Secret").

7. Plaintiffs are related companies as that term is defined in or under Lanham Act §45, 15 U.S.C. 1127. They are all Delaware corporations and subsidiaries of Intimate Brands, Inc., also a Delaware corporation. Prior to Intimate Brands, Inc., plaintiffs and their predecessors were subsidiaries of The Limited, Inc., a Delaware corporation, headquartered in Columbus, Ohio.

8. Victoria's Secret reached over 1.5 billion people globally through print and electronic public relations efforts in 1997 alone.

9. According to a recent survey, VICTORIA'S SECRET is rated as the ninth most famous brand in the United States--the only retailer to be among the top ten. A copy of a Women's Wear Daily article discussing this survey is attached hereto and incorporated by reference herein as Plaintiffs' Exhibit 5.

10. Plaintiffs have been diligent in protecting their rights to the VICTORIA'S SECRET Mark. Defendants use of Victor's Secret, and later, Victor's Little Secret to sell low-quality lingerie, pornographic videos, various "sex toys" and other "adult" novelty items (color photocopies of which are annexed hereto and incorporated by reference herein as Plaintiffs' Exhibit 6) is an indisputable violation of our trademark rights. Any association between VICTORIA'S SECRET and defendants in the minds of consumers will seriously tarnish the image we have vigorously sought to uphold since 1982.

11. It is my understanding that, when devising the name "Victor's Secret" for its store, the Moseleys were aware of the existence of Victoria's Secret and the fact that it sells lingerie. (Victor Moseley Dep., p. 54, l. 24-25; p. 55, l. 1-15).

12. It is my further understanding that the Moseleys had also considered using the name "Adult Toys Are Us" to designate their store. (Victor Moseley Dep. at p. 57, l. 1-8).

13. Mr. Moseley also testified that, prior to the institution of this lawsuit, his customers remarked upon the similarity between the name of defendant's store and that of VICTORIA'S SECRET. (Victor Moseley Dep. at 58, l. 7-15).

14. In my opinion, there is absolutely no justification whatsoever for defendants to trade off on our famous VICTORIA'S SECRET Mark to sell its cheap, tawdry merchandise. Whether their distasteful store is called Victor's Secret or Victor's Little Secret, continued use of the name will irreparably injure and tarnish the image and reputation of the VICTORIA'S SECRET Mark as well as dilute its distinctiveness as a symbol of quality.

WHEREFORE, I respectfully request that this Court find that there is no genuine issue of fact regarding defendants' unauthorized use of our famous VICTORIA'S SECRET Mark to sell its goods, and that this Court find and hold that the use of the VICTORIA'S SECRET Mark by defendants violates our trademark rights, and should be enjoined.

Timothy B. Lyons

Sworn to before me this 30th day of April, 1999

Notary Public

NOTARIAL SEAL STATE OF OHIO

WENDY D. SECKMAN
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES DEC. 25, 2001

[Exhibit 1]

Int. Cl.: 25

Prior U.S. Cl.: 39

United States Patent and Trademark Office

Reg. No. 1,146,199
Registered Jan. 20, 1981

TRADEMARK
Principal Register

VICTORIA'S SECRET

Victoria's Secret (partnership)
1560 Waller St.
San Francisco, Calif. 94117

For: WOMEN'S LINGERIE. in CLASS 25 (U.S. Cl. 39).
First use Jun. 12, 1977; in commerce Jun. 12, 1977.

Ser. No. 159,253, filed Feb. 21, 1978.

J. H. WEBB, Primary Examiner

D64-001
exhibit 2

[Exhibit 2]

Int. Cls.: 25 and 42

Prior U.S. Cls.: 39 and 101

United States Patent and Trademark Office

Reg. No. 1,179,309
Registered Nov. 24, 1981

TRADEMARK
SERVICE MARK
Principal Register

Victoria's Secret (partnership)
115 Wisconsin St.
San Francisco, Calif. 94117

For: WOMEN'S LINGERIE AND UNDERWEAR, in CLASS 25 (U.S Cl. 39).
First use Jun. 12, 1977; in commerce Jun. 12, 1977.
For: RETAIL STORE SERVICES DEALING IN WOMEN'S LINGERIE AND UNDERGARMENTS, in CLASS 42 (U.S. Cl. 101).

First use Jun. 12, 1977; in commerce Jun. 12, 1977.

Ser. No. 255,771, filed Mar. 28, 1980.

DAVID C. REIHNER, Primary Examiner

STEVEN L. CATALANO, Examiner

[Exhibit 3]

Int. Cl.: 3

Prior U.S. Cl.: 52

United States Patent and Trademark Office

Reg. No. 1,224,782
Registered Jan. 25, 1983

TRADEMARK
Principal Register

Victoria's Secret, Inc. (California corporation)
115 Wisconsin St.
San Francisco, Calif. 94117

For: WASHING COMPOUND FOR USE WITH LINGERIE AND FINE WASHABLES, in CLASS 3 (U.S. Cl. 52).

First use Nov. 8, 1979; in commerce Jun. 22, 1981.

Ser. No. 325,206, filed Aug. 25, 1981.

EDWARD NELSON, Examining Attorney

[Exhibit 4]

Int. Cls.: 3, 4, 9, 16, 20, 21, 22, 24, 25, 28 and 42

Prior U.S. Cls.: 1, 2, 4, 5, 6, 13, 15, 22, 23, 29, 30, 32, 33, 36, 37, 38, 39, 40, 42, 50, 51, 52, 100 and 101

Reg. No. 1,908,042

United States Patent and Trademark Office

Registered Aug. 1, 1995

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

VICTORIA'S SECRET

V SECRET CATALOGUE, INC. (DELAWARE CORPORATION)
1105 NORTH MARKET STREET
WILMINGTON, DE 19801

FOR: TOILET SOAPS, WASHING COMPOUNDS FOR USE WITH LINGERIE AND FINE WASHABLES, HAIR SHAMPOOS, SCENTED DRAWER SACHETS; PERSONAL FRAGRANCES, NAMELY COLOGNE, PERFUME, TOILET WATER, AND ESSENTIAL OILS FOR PERSONAL USE; BATH POWDER, NON-MEDICATED FOOT POWDER, AND BODY POWDER; AND PERSONAL CARE PREPARATIONS, NAMELY BATH, HAND AND BODY LOTIONS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 6-12-1977; IN COMMERCE 6-12-1977.

FOR: CANDLES, IN CLASS 4 (U.S. CL. 15).

FIRST USE 6-12-1977; IN COMMERCE 6-12-1977.

FOR: PRERECORDED COMPACT DISCS AND AUDIO TAPES, BOTH FEATURING MUSIC, IN CLASS 9 (U.S. CL. 36).

FIRST USE 6-12-1977; IN COMMERCE 6-12-1977.

FOR: MAIL ORDER CATALOGS FEATURING CLOTHING, LINGERIE, AND TOILETRIES; BRIDAL GUEST BOOKS; CALENDARS, AND ADDRESS BOOKS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 6-12-1977; IN COMMERCE 6-12-1977.

FOR: PICTURE FRAMES, HAND MIRRORS AND PILLOWS, IN CLASS 20 (U.S. CLS. 32 AND 50).

FIRST USE 6-12-1977; IN COMMERCE 6-12-1977.

FOR: PERFUME ATOMIZERS SOLD EMPTY; PERFUME BOTTLES SOLD EMPTY; NON-METAL DECORATIVE BOXES; HAIR COMBS AND HAIR BRUSHES; DECORATIVE TRAYS NOT OF PRECIOUS METAL; AND FLASKS SOLD EMPTY, IN CLASS 21 (U.S. CLS. 2, 13, 23, 29, 30, 33, 40 AND 50).

FIRST USE 6-12-1977; IN COMMERCE 6-12-1977.

FOR: MESH LINGERIE BAGS FOR WASHING LINGERIE AND CLOTH BAGS FOR LINGERIE STORAGE, IN CLASS 22 (U.S. CL. 2).

FIRST USE 6-12-1977; IN COMMERCE 6-12-1977.

FOR: WASH CLOTHS, TOWELS AND BEDDING, NAMELY COMFORTERS, PILLOW CASES, SHEETS, SHAMS, DUVETS, AND DUST RUFFLES, IN CLASS 24 (U.S. CL. 42).

FIRST USE 6-12-1977; IN COMMERCE 6-12-1977.

FOR: WOMEN'S AND MEN'S OUTERWEAR, UNDERWEAR AND NIGHTWEAR, NAMELY LINGERIE, ROBES, CAFTANS, KIMONOS, BOXER SHORTS, PAJAMAS, SHIRTS, PANTS, JEANS, DRESSES, SKIRTS, SWEATERS, JUMPSUITS, BODYSUITS, SWEATSHIRTS, JACKETS, T-SHIRTS, SCARVES, LEOTARDS, TIGHTS, SWIMSUITS, BEACH SHIRTS, HOSIERY, FOOTWEAR, IN CLASS 25 (U.S. CLS. 22 AND 39).

Citation
8/26/98 WOMENSWEAR 14
8/26/98 WWD 14
1998 WL 8775964

Search Result

Rank 1 of 1

Database
WOMENSWEAR

WWD
COPYRIGHT 1998 Capital Cities Media Inc.

Wednesday, August 26, 1998

Vol. 175, No. 170, ISSN: 0149-5380

SURVEY SAYS LOYALTY TO BRANDS IS FLEETING.

Jennifer Owens

WASHINGTON -- Consumers might say they're loyal to their favorite brand names, but according to a KSA/NPD Branding Report, retailers can't expect that faithfulness to last long.

That's because the biennial survey, which tracks responses to 180 female apparel brands, found that consumers' choice of the brands they would most likely repurchase has changed dramatically since they were last asked in 1996.

That year, Levi's topped the list. But while Levi's hung onto an eighth-place slot in 1998, it was one of only three brands to remain, including Hanes and Hanes Her Way. The new list places Tommy Hilfiger at top, followed in descending order by Hanes, **Victoria's Secret**, L.L. Bean, Eddie Bauer, Hanes Her Way, Timberland, Alfred Dunner, Dockers, Levi's and Nike.

According to the survey -- compiled by Kurt Salmon Associates, an international management consulting firm, and the NPD Group, a market research firm based in Port Washington, N.Y. -- overall loyalty to brands declined slightly in 1998. Despite the decline, though, KSA said loyalty continues to be a key factor in brand profitability.

"While higher levels of awareness are certainly desirable, consumer loyalty is the ultimate prize that retailers and manufacturers seek," said Allen Robinson, KSA's manager of consumer marketing. "While gaining a consumer trial [purchase] is difficult enough, a brand that has disappointed a consumer enough to [make the consumer] stop buying has a much more difficult challenge to regain her confidence and trust."

But as consumer loyalty has softened slightly, so has the overall importance shoppers place on brand names: The 1998 survey -- based on more than 550 responses to a mailed questionnaire completed during first quarter -- found 41 percent of women thought a brand name was "very/somewhat important" in purchasing apparel, compared with 46

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

percent in 1996.

Nevertheless, while loyalty has wavered, the 1998 survey showed that, as in 1996, most consumers still rely on labels when shopping for products they regularly purchase or when fit is important. For example, commodity products like underwear and jeans inspired the highest brand loyalty, while seasonal items, such as swimwear, received the least. The top five categories in which brands were most important to women were: bras (82 percent), underwear (80 percent), hosiery (72 percent), jeans (71 percent) and casual pants (61 percent).

And brands still play a substantial role in helping women judge value, fit and quality. According to the survey, 88 percent of consumers said they find brands important for value, while 83 percent use brands to determine an item's "look after being worn several times." Fit was named as a top issue by 81 percent, while 80 percent cited quality and 68 percent said brands help them determine "how you will feel while wearing it."

KSA found that consumer interest in all brands -- from manufacturer to retail and private label -- is growing. For example, for the first time a retail brand, **Victoria's Secret**, cracked the survey's top 10 list for consumer awareness -- a list long controlled by manufacturers only. KSA said **Victoria's Secret's** ascension demonstrates the increasing overall strength of retail brands.

The survey found the average awareness of retail brands in 1998 increased 11.3 percent from 1996, to 62.4 percent, while awareness of the top 10 private label brands jumped to 60.4 percent in 1998, a 13.2 percent increase over 1996. (In comparison, the overall average awareness of all brands surveyed was 48.3 percent.)

The top 10 private labels were, in descending order: Jaclyn Smith, Kathie Lee, Hunt Club, Arizona, St. John's Bay, Bobbie Brooks, Kathy Ireland, Worthington, Cabin Creek and Canyon River Blues.

"The increased efforts of retailers are paying off," said Adelle Kirk, KSA's associate director of consumer marketing. "Retailers have realized the value of branding themselves over the last few years, and it shows. Consumers continue to blur the traditional definitions of national, retail and private brands."

Overall, the list of **America's most recognized brands** remained essentially stable in 1998 compared with the 1996 survey, with the notable additions of **Victoria's Secret**, Sheer Energy and Lee jeans. Ranked in order, the 1998 list was topped by Wrangler, which ranked fifth in 1996, followed by Hanes, Calvin Klein, Levi's and Fruit of the Loom. Reebok, Hanes Her Way and Nike all tied for sixth place, followed

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

BEST AVAILABLE COPY

8/26/98 WOMENSWEAR 14

by Lee, Sheer Energy and **Victoria's Secret** in ninth.

The survey also registered a sharp rise in brand importance among younger shoppers. According to the survey 47 percent of consumers under 30 said brands were "very/somewhat important" in choosing what to purchase, compared with only 28 percent in 1996.

KSA said the 19 percent jump made the age bracket the nation's most brand sensitive.

---- INDEX REFERENCES ----

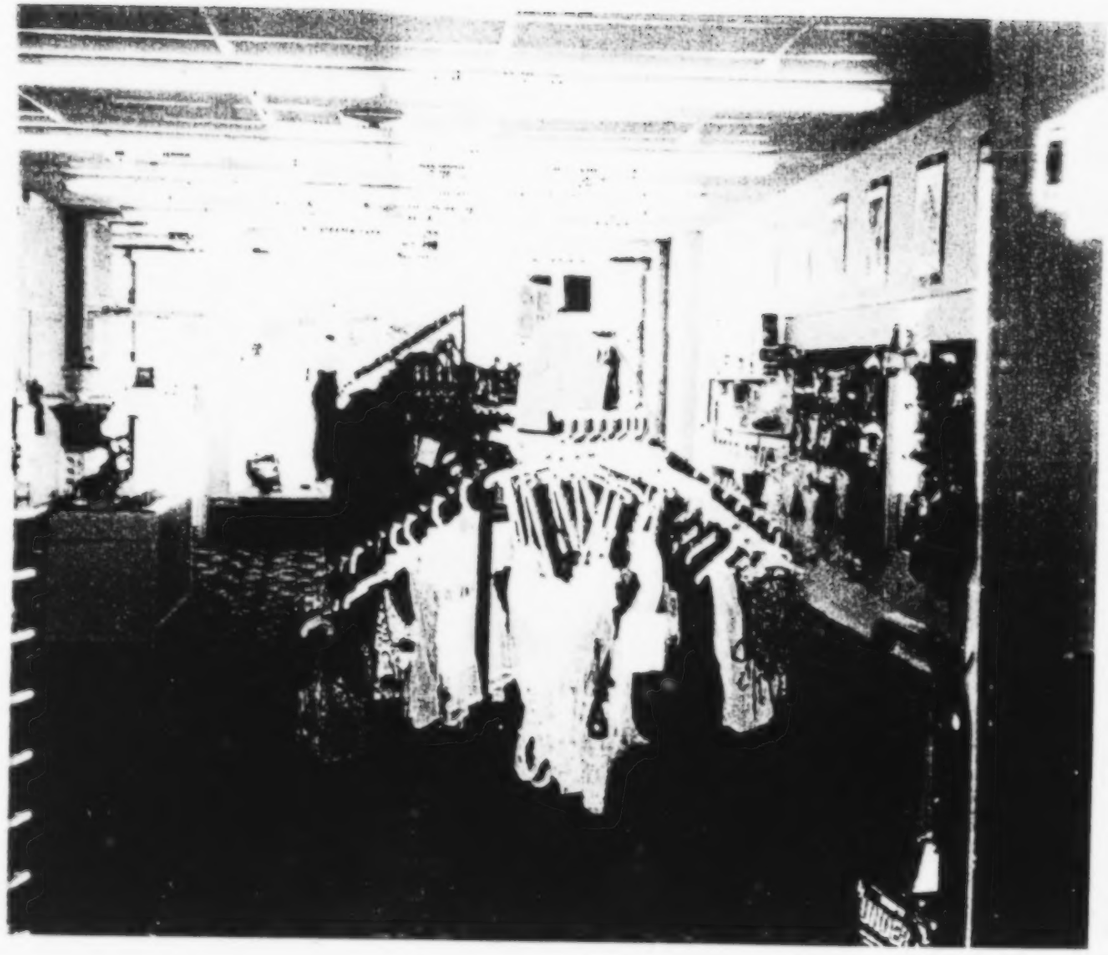
KEY WORDS: BRAND CHOICE BRAND NAME PRODUCTS RETAIL INDUSTRY WOMEN'S CLOTHING INDUSTRY

INDUSTRY: Clothing & Industrial Fabrics (CLO)

SIC: 2300

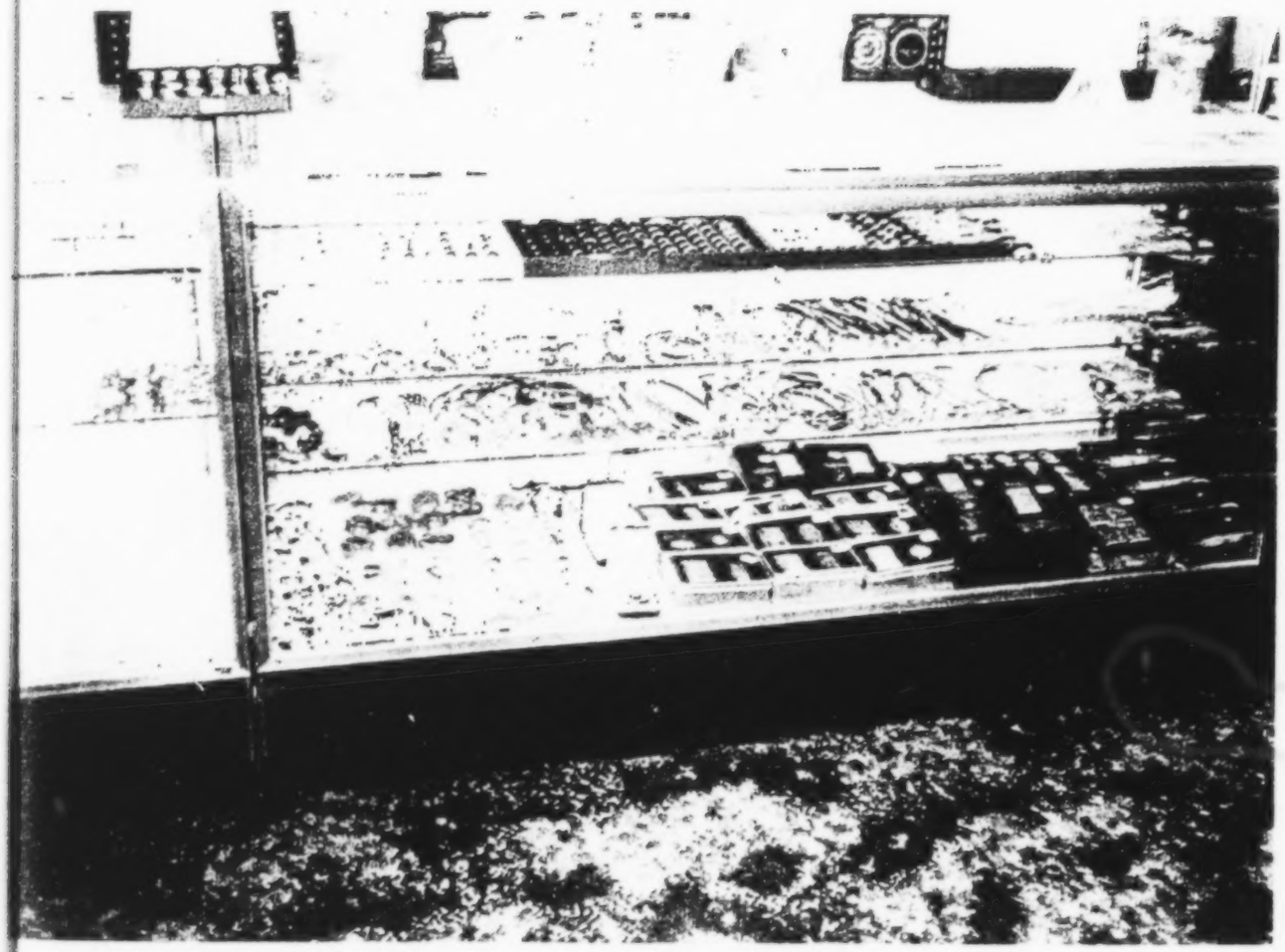
Word Count: 774
8/26/98 WOMENSWEAR 14
END OF DOCUMENT

Copr. © West 1999 No Claim to Orig. U.S. Govt. Works

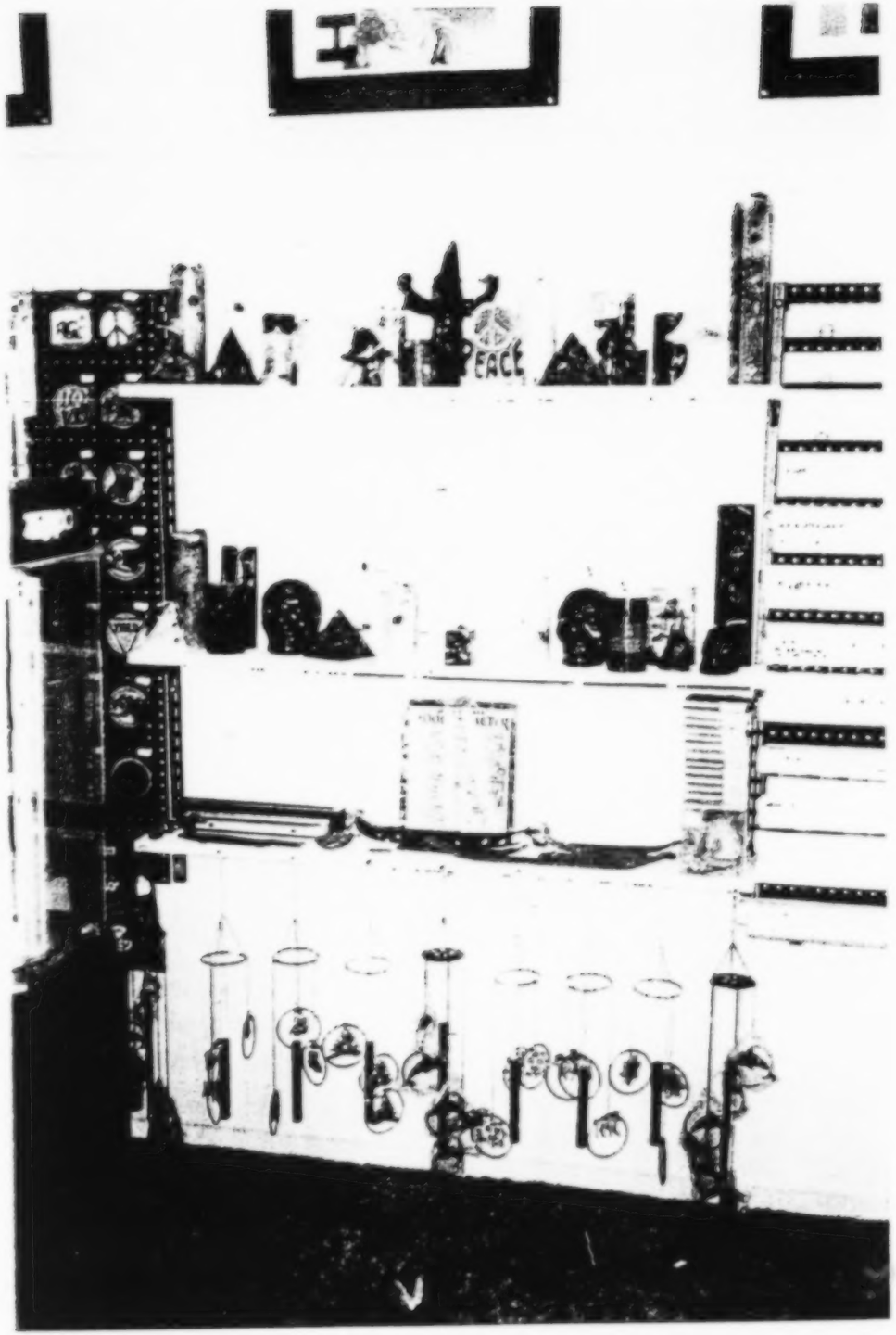


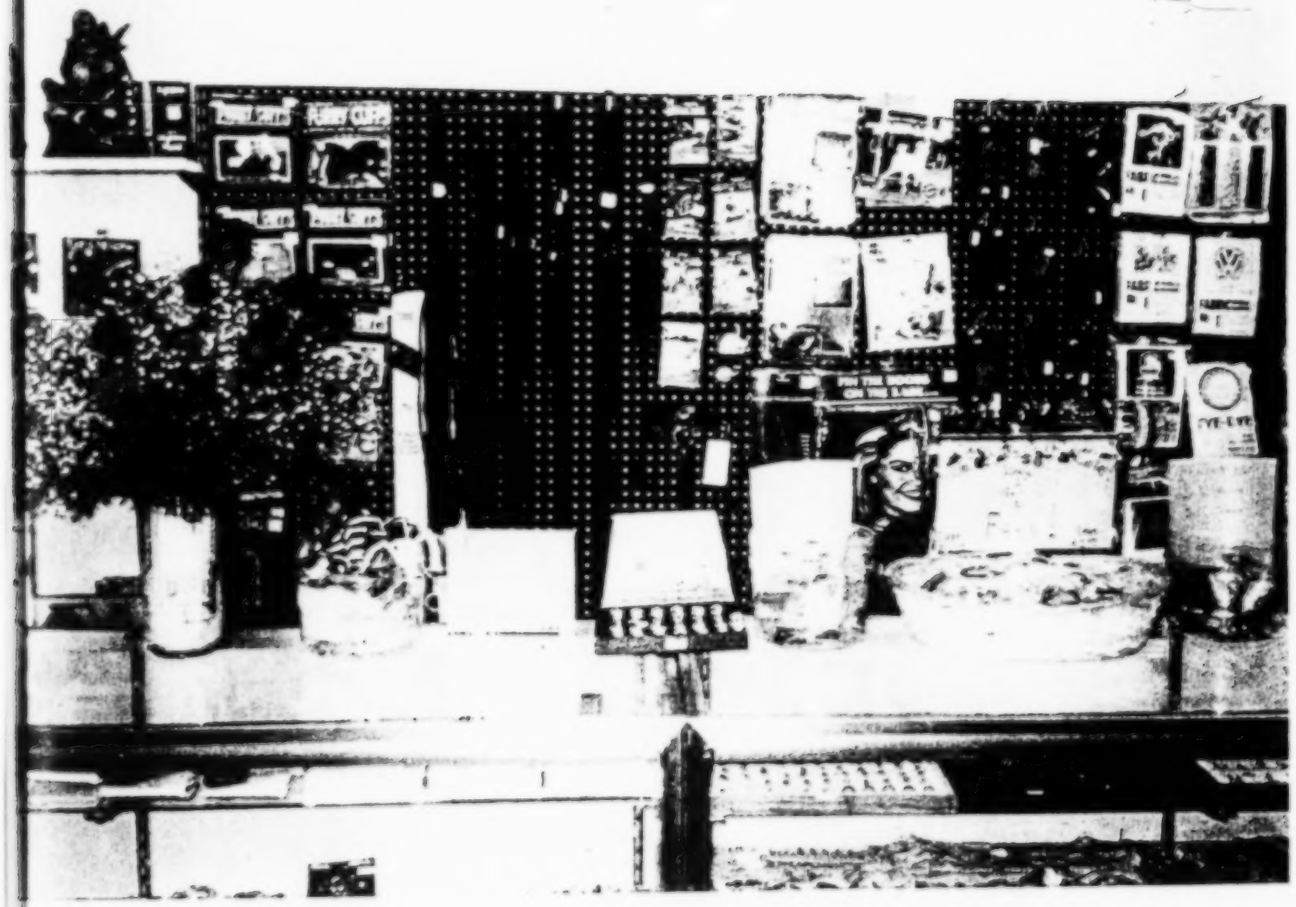
THE OUTLAW
EXPOSED
VOGUE

OLD
FART

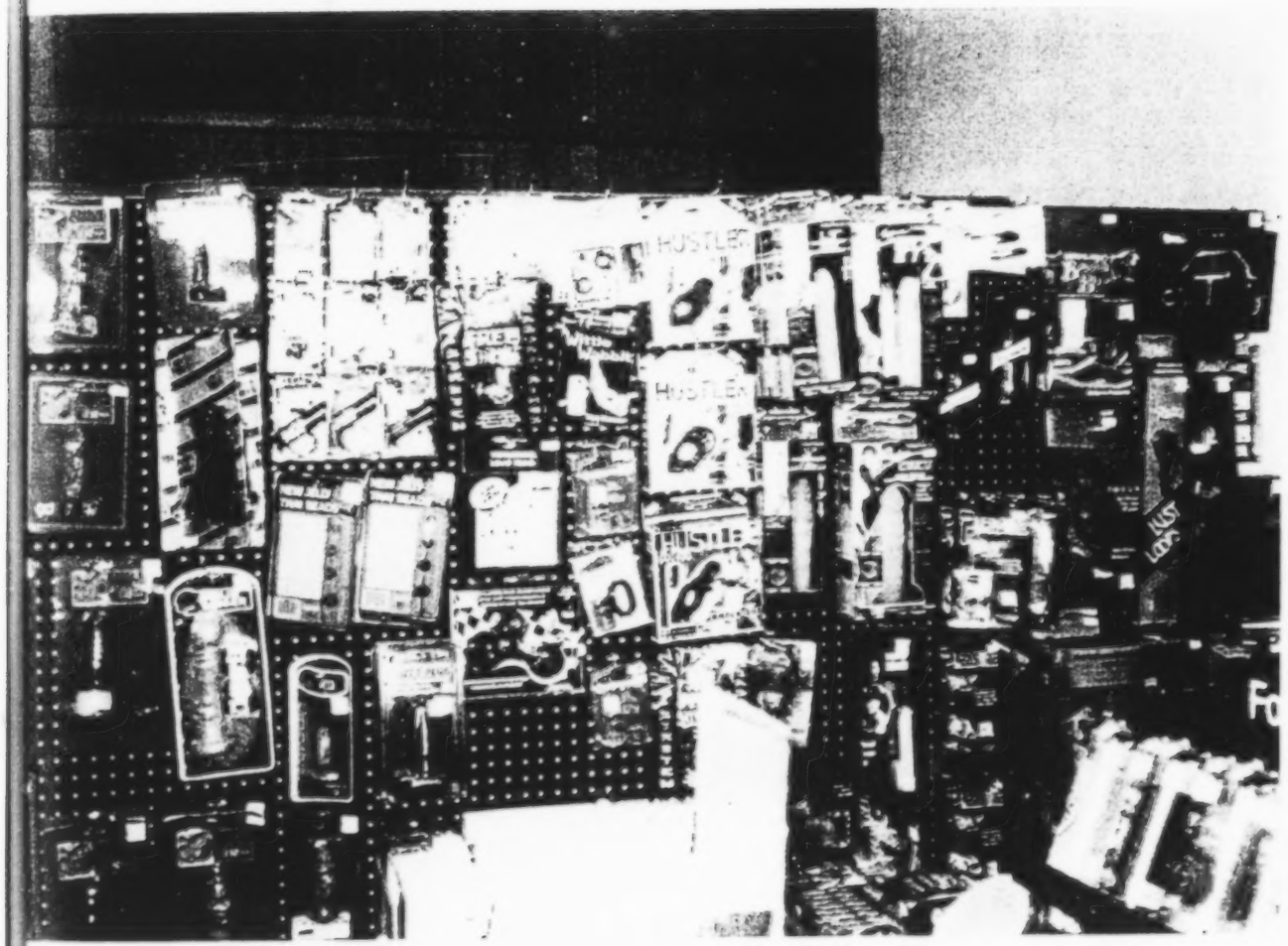


10TH
BIRTHDAY





ForPlay Succulents
PULSATING


HUSTLER
HUSTLER
HUSTLER

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

- -x

V SECRET CATALOGUE, INC.
VICTORIA'S SECRET STORES, INC. and
VICTORIA'S SECRET CATALOGUE, Inc.,

Plaintiffs,

v.

VICTOR MOSELEY and
CATHY MOSELEY
d/b/a VICTOR'S LITTLE SECRET
(formerly VICTOR'S SECRET),

Defendants.

Civil Action
No. 3:09cv-395-S
(Charles R. Simpson, C.J.)

- -x

AFFIDAVIT OF JAMES J. MCGINTY

STATE OF OHIO)
: ss.:
COUNTY OF Licking)

JAMES J. MCGINTY, being duly sworn, deposes and says:

1. I am Vice President and Controller of Victoria's Secret Stores. As such, I am responsible for all the accounting operations of Victoria's Secret Stores, including inventory control, sales audits, accounts payable, payroll and shop control; I also serve as the legal liaison for Victoria's Secret Stores. Prior to my present position, which I have held since 1995, I was employed by Structure, Inc. for five-and-a-half years, most recently as Director of Store Support, and before that, I worked

for Express, LLC for six years.[1]

2. As a result, I am fully familiar with the facts hereinafter set forth of my personal knowledge.

3. Plaintiff, V Secret Catalogue, Inc., is the record owner of the VICTORIA'S SECRET Mark which is registered in the United States Patent and Trademark Office, inter alia, as follows:

Registration No.	Issued	Goods
1,146, 199	1/20/81	Women's Lingerie in Class 25
1,179,309	11/24/81	Women's Lingerie and Underwear in Class 25; Retail Stores Services in Class 42
1,224,782	1/25/83	Cosmetics and Cleaning Preparations in Class 3.
1,908,042	8/1/95	Personal Care Products in Class 3; Candles in Class 4; Prerecorded Compact Discs and Audio Tapes featuring Music in Class 9; Mail Order Catalogs in Class 16; Picture Frames, Hand Mirrors and Pillows in Class 20; Perfumes in Class 21; Lingerie Bags in Class 22; Wash Cloths, Towels and Bedding in Class 24; Clothing in Class 25; Stuffed Toys in Class 28; and Retail Stores Services In Class 42.

(See Lyons Aff. at ¶ 3; Plaintiffs' Exhibits 1-4).

[1] Both Structure and Express are wholly-owned subsidiaries of The Limited, Inc.

4. V Secret Catalogue, Inc. licenses plaintiff, Victoria's Secret Stores, Inc., to use the VICTORIA'S SECRET Mark on and in connection with the name of its retail stores and the merchandise which it offers for sale and sells in its VICTORIA'S SECRET stores throughout the United States.

5. Plaintiffs are related companies as that term is defined in Lanham Act §45, 15 U.S.C. 1127. They are all Delaware corporations and subsidiaries of Intimate Brands, Inc., also a Delaware corporation. Prior to Intimate Brands, Inc., plaintiffs and their predecessors were subsidiaries of The Limited, Inc., a Delaware corporation, headquartered in Columbus, Ohio.

6. The Limited purchased the VICTORIA'S SECRET Mark and business in 1982, and since that time, has expended tremendous time, money and effort to ensure that all goods produced under the VICTORIA'S SECRET Mark are of the highest quality.

7. At the time of the purchase, there were three (3) VICTORIA'S SECRET stores in the San Francisco area, the first VICTORIA'S SECRET store having opened in the Stanford Shopping Center in Palo Alto, California in October, 1977. The business also had a small mail order following.

8. The Limited created and developed an entirely new and different image for the VICTORIA'S SECRET brand--one of moderately priced, high quality, attractively designed lingerie sold in a store setting designed to look like a women's bedroom.

9. Since 1982, the number of VICTORIA'S SECRET stores has grown to over 750; by the end of 1999, the number is expected

to reach 912. In addition, over 400 million copies of the VICTORIA'S SECRET catalog are distributed annually throughout the United States. More recently, Victoria's Secret has began sales on the internet at its website located at www.victoriassecret.com. (See Pozy Aff. at ¶ 9).

10. VICTORIA'S SECRET stores sell a complete line of lingerie, women's undergarments and nightwear, robes, caftans and kimonos, slippers, sachets, lingerie bags, hanging bags, candles, soaps, cosmetic brushes, atomizers, bath products and fragrances. Each VICTORIA'S SECRET store prominently displays a VICTORIA'S SECRET sign in the storefront, so that consumers who see or enter the store know that the store is a VICTORIA'S SECRET store and that the merchandise sold in the store is VICTORIA'S SECRET merchandise. Each article of clothing sold in a VICTORIA'S SECRET store is labelled as a VICTORIA'S SECRET item, and bears a hangtag or label prominently bearing the VICTORIA'S SECRET Mark. Annexed hereto and incorporated by reference herein as Plaintiffs' Exhibit 7 is a color photocopy of one such hangtag.

11. Sales by VICTORIA'S SECRET stores, which are continuing, have been and are substantial. For example, during the past ten years, annual store sales have been in excess of the following:

Year	Annual Store Sales
1998	1,507,000,000
1997	1,407,000,000
1996	1,215,000,000
1995	1,286,000,000
1994	1,182,000,000
1993	991,000,000
1992	840,000,000
1991	754,000,000
1990	587,000,000
1989	418,000,000

12. The VICTORIA'S SECRET stores located at the Mall St. Matthews and the Oxmoor Center in Louisville, Kentucky are located approximately sixty miles from defendants' store in Elizabethtown, Kentucky. Combined retail sales at the stores reached $4,634,000 in 1998, $4,444,000 in 1997, $3,990,000 in 1996, $4,058,000 in 1995 and $3,973,000 in 1994. The VICTORIA'S SECRET store in Oxmoor Center has been operating since April 24, 1985; the VICTORIA'S SECRET store at the Mall St. Matthews has been operating since November 16, 1992.

13. VICTORIA'S SECRET merchandise has been and continues to be extensively advertised and promoted in practically all media. For example, over the years, VICTORIA'S SECRET merchandise has appeared in articles in consumer magazines such as Elle, Glamour, Ladies Home Journal, Good Housekeeping, Redbook, McCall's, Cosmopolitan, Vogue and Mademoiselle. Moreover, during a four-month period from November 1997 through February 1998 (the month the Moseleys opened Victor's Secret), Victoria's Secret was mentioned in over 800 newspaper articles, according to a LEXIS/NEXIS search. Attached hereto and incorporated by reference herein as Plaintiffs' Exhibit 8 are color photocopies of magazine articles featuring Victoria's Secret; attached hereto and incorporated by reference herein as Plaintiffs' Exhibit 9 is a copy of the LEXIS/NEXIS search result. In addition, VICTORIA'S SECRET models and merchandise have been regularly featured in national

television shows such as "Oprah", "Inside Edition", "The Tonight Show", "Access Hollywood" "CNN News" and "Extra". Stations in Kentucky carrying Victoria's Secret advertising include WAVE, WDRB, EHAS, WLKY, WDKY, WKYT, WLEX, WTVQ, WYMT, WCPO, WKRC, WLWT, WXIX, WCHS, WOWK, WSAZ, WEHT, WFIE, KBSI, KFVS, WFSD, WSIL, WBKO, WKNT, WKRN, WSMV, WTVF, WZTV, WATE, WBIR, WCYB, WEMT, WJHL and WKPT.

14. Victoria's Secret has expended considerable sums of money on advertising and promoting its merchandise. For example, during the past ten years, Victoria's Secret Stores has expended in excess of the following amounts on such advertising and promotion:

Year	Amount
1998	$55,180,000
1997	$31,478,000
1996	$21,946,000
1995	$14,059,000
1994	$20,375,000
1993	$ 5,486,000
1992	$ 5,835,000
1991	$ 7,235,000
1990	$ 5,727,000
1989	$ 3,893,000

15. In Kentucky alone, advertising expenditures amounted to the following:

Year	Amount
1998	$690,000
1997	$431,000
1996	$272,000
1995	$107,000
1994	$ 67,000
1993	$ 67,000
1992	$ 73,000
1991	$109,000
1990	$ 86,000
1989	$ 57,000

16. It is my understanding that, under a mark remarkably similar to that of VICTORIA'S SECRET, defendants sell low-quality

lingerie, pornographic videos, various "sex toys" and other "adult" novelty items. (See Lyons Aff. at ¶ 10; Pl. Exh. 6).

17. It is my further understanding that, when devising the name "Victor's Secret" for its store, the Moseleys were aware of the existence of Victoria's Secret and the fact that it sells lingerie (Victor Moseley Dep., p. 54, l. 24-25; p. 55, l. 1-15).

18. I believe defendants' intention to trade off on the image of a well-known mark are even more apparent from the fact that they also considered using the name "Adult Toys Are Us" to designate their store. (Victor Moseley Dep. at p. 57, l. 1-8).

19. Mr. Moseley's own testimony makes clear that his business benefited from invoking the image of VICTORIA'S SECRET in the minds of consumers. As he stated in his deposition testimony, prior to the institution of this lawsuit, his clients remarked upon the similarity between the name of defendant's store and that of VICTORIA'S SECRET. (Victor Moseley Dep. at 58, l. 7-15).

20. As my colleagues, Timothy B. Lyons and James Pozy stated in their affidavits, I, too, find absolutely no reason for Victor's Little Secret to trade off on our famous VICTORIA'S SECRET Mark to sell its cheap, tawdry merchandise. The mere association of the VICTORIA'S SECRET Mark with such inferior goods irreparably injures and tarnishes the image and reputation of the VICTORIA'S SECRET Mark as well as dilutes its distinctiveness as a symbol of quality.

WHEREFORE, I respectfully request that this Court find that there is no genuine issue of fact regarding defendants' unauthorized use of our famous VICTORIA'S SECRET Mark to sell its goods, and that this Court find and hold that the use of the VICTORIA'S SECRET Mark by defendants violates our trademark rights, and should be enjoined.

James J. McGinty

Sworn to before me this
30TH day of April, 1999.

Bonita Jean Link
Notary Public

BONITA JEAN LINK
NOTARY PUBLIC - STATE OF OHIO
RECORDED IN LICKING COUNTY
MyCommission Expires June 25, 2003

[The following exhibits are not reproduced in the Joint Appendix but are available in the Record at R.33:]

Exhibit 7 (Color copies of Victoria's Secret hang tags)

Exhibit 8 (Color copies of magazine articles concerning Victoria's Secret)

Exhibit 9 (LEXIS/NEXIS printout)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

V SECRET CATALOGUE, INC. VICTORIA'S SECRET STORES, INC. and VICTORIA'S SECRET CATALOGUE, Inc., Plaintiffs, v. VICTOR MOSELEY and CATHY MOSELEY d/b/a VICTOR'S LITTLE SECRET (formerly VICTOR'S SECRET), Defendants.	:	Civil Action No. 3:09cv-395-S (Charles R. Simpson, C.J.)

AFFIDAVIT OF JAMES POZY

STATE OF OHIO)
: ss.:
COUNTY OF FRANKLIN)

JAMES POZY, being duly sworn, deposes and says:

1. I am the Director of Inventory Control of Victoria's Secret Catalogue, LLC (formerly Victoria's Secret Catalogue, Inc.), which distributes the VICTORIA'S SECRET catalog.

2. As a result, I am fully familiar with the facts hereinafter set forth of my personal knowledge.

3. Plaintiff, V Secret Catalogue, Inc., is the record owner of the VICTORIA'S SECRET Mark which is registered in the

United States Patent and Trademark Office, inter alia, as follows:

Registration No.	Issued	Goods
1,146, 199	1/20/81	Women's Lingerie in Class 25
1,179,309	11/24/81	Women's Lingerie and Underwear in Class 25; Retail Stores Services in Class 42
1,224,782	1/25/83	Cosmetics and Cleaning Preparations in Class 3.
1,908,042	8/1/95	Personal Care Products in Class 3; Candles in Class 4; Prerecorded Compact Discs and Audio Tapes featuring Music in Class 9; Mail Order Catalogs in Class 16; Picture Frames, Hand Mirrors and Pillows in Class 20; Perfumes in Class 21; Lingerie Bags in Class 22; Wash Cloths, Towels and Bedding in Class 24; Clothing in Class 25; Stuffed Toys in Class 28; and Retail Stores Services In Class 42.

(See Lyons Aff. at ¶; Plaintiffs' Exhibits 1-4).

4. V Secret Catalogue, Inc. licenses plaintiff, Victoria's Secret Catalogue to use the VICTORIA'S SECRET Mark on and in connection with the name of its catalog and the merchandise which it offers for sale and sells in its VICTORIA'S SECRET

catalog, which is distributed nationally as well as internationally.

5. Plaintiffs are related companies as that term is defined in Lanham Act §45, 15 U.S.C. 1127. They are all Delaware corporations and subsidiaries of Intimate Brands, Inc., also a Delaware corporation. Prior to Intimate Brands, Inc., plaintiffs and their predecessors were subsidiaries of The Limited, Inc., a Delaware corporation, headquartered in Columbus, Ohio.

6. The Limited purchased the VICTORIA'S SECRET Mark and business in 1982, and since that time, has expended tremendous time, money and effort to ensure that all goods produced under the VICTORIA'S SECRET Mark are of the highest quality.

7. At the time of the purchase, there were three (3) VICTORIA'S SECRET stores in the San Francisco area, the first VICTORIA'S SECRET store having opened in the Stanford Shopping Center in Palo Alto, California in October, 1977. The business also had a small mail order following.

8. The Limited created and developed an entirely new and different image for the VICTORIA'S SECRET brand. It introduced moderately priced, high quality, attractively designed lingerie, and redefined the mail order catalog business by establishing a different marketing theme for each catalog and by photographing models wearing the merchandise in actual surroundings.

9. Currently, over 400 million copies of the VICTORIA'S

SECRET catalog are distributed annually throughout the United States. More recently, Victoria's Secret has began sales on the internet at its website located at www.victoriassecret.com. Annexed hereto and incorporated herein by reference as Plaintiffs' Exhibit 10 is a printout of said website.

10. In addition to the goods sold at VICTORIA'S SECRET stores, which includes a complete line of lingerie, women's undergarments and nightwear, robes, caftans and kimonos, slippers, sachets, lingerie bags, hanging bags, candles, soaps, cosmetic brushes, atomizers, bath products and fragrances, the VICTORIA'S SECRET catalog also sells women's swimsuits, jeans, skirts, dresses, sweaters, T-shirts, shoes, bedding and accessories.

11. The cover of each of the VICTORIA'S SECRET catalogs prominently displays the VICTORIA'S SECRET Mark. Furthermore, the toll-free telephone order line is answered by the Victoria's Secret sales staff, who identify themselves as Victoria's Secret representatives. The boxes in which the telephone-ordered goods are shipped to the purchasers display, in the interest of privacy, the letters VSC. Annexed hereto and incorporated herein by reference as Exhibit 11 is a copy of a mailing label sent to purchasers of goods from the VICTORIA'S SECRET catalog.

12. Sales of VICTORIA'S SECRET merchandise through the VICTORIA'S SECRET catalog, which sales are continuing, have been

and are substantial. For example, during the past seven years, annual sales figures for the VICTORIA'S SECRET catalog have been in excess of the following:

13.

Year	Annual Sales
1998	$759,335,000
1997	$734,378,000
1996	$684,302,000
1995	$661,127,000
1994	$569,306,000
1993	$425,120,000
1992	$342,058,000

14. Residents of Kentucky are included in the VICTORIA'S SECRET mail order catalog program. Currently, over 3.5 VICTORIA'S SECRET catalogs are distributed to Kentucky residents annually, with 39,000 catalogs distributed in Elizabethtown alone in 1998. Furthermore, in the last five years, Kentucky residents have purchased nearly $30 million of VICTORIA'S SECRET merchandise through the catalog. Attached hereto and incorporated herein by reference is a table enumerating the circulation, net sales per year, and advertising expenditures of Victoria's Secret Catalogue, LLC nationwide, in Kentucky, in Hardin County and in Elizabethtown, respectively.

15. VICTORIA'S SECRET merchandise has been and continues to be extensively advertised and promoted in practically all media. For example, over the years, VICTORIA'S SECRET merchandise has been advertised and appeared in articles in consumer magazines such as Elle, Glamour, Ladies Home Journal, Good Housekeeping, Redbook,

McCall's, Cosmopolitan, Vogue and Mademoiselle. Victoria's Secret has also been the subject of innumerable newspaper articles throughout the United States. For example, during a four-month period from November 1997 through February 1998 (the month the Moseleys opened Victor's Secret), Victoria's Secret appeared in over 800 newspaper articles, according to a NEXIS search. VICTORIA'S SECRET models and merchandise have been regularly featured in national television shows such as "Oprah", "Inside Edition", "The Tonight Show", "Access Hollywood" "CNN News" and "Extra". Stations in Kentucky carrying Victoria's Secret advertising include WAVE, WDRB, EHAS, WLKY, WDKY, WKYT, WLEX, WTVQ, WYMT, WCPO, WKRC, WLWT, WXIX, WCHS, WOWK, WSAZ, WEHT, WFIE, KBSI, KFVS, WFSD, WSIL, WBKO, WKNT, WKRN, WSMV, WTVF, WZTV, WATE, WBIR, WCYB, WEMT, WJHL and WKPT. (See Pozy Aff. at ¶ 15; Pl. Exh. 8-9).

16. In 1995, Victoria's Secret launched its first annual Fashion Show. In addition to the VICTORIA'S SECRET models who participate in the show, numerous celebrities from the fashion, film and television industries also attend. Attendance is by invitation only, as no tickets to the Show are sold. So widespread has the media coverage of the "Victoria's Secret Fashion Show" been that an invitation to the Show has become one of the most difficult to obtain.

17. The last Show, which took place on February 3, 1999, was simulcast via the internet at Victoria's Secret's website, which is fully accessible worldwide. Nearly two million people viewed the webcast live, setting a new world's record for the total

number of hits received during a specific event. The event was an international sensation and was reported by media outlets throughout the world.

18. Victoria's Secret has expended considerable sums of money on advertising and promoting its merchandise. For example, during the past five years, Victoria's Secret Catalogue has expended in excess of the following amounts on such advertising and promotion:

YEAR	AMOUNT
1998	$ 237,087,000
1997	$ 226,690,000
1996	$ 209,491,000
1995	$ 202,968,000
1994	$ 154,008,000

19. In Kentucky, advertising expenditures of Victoria's Secret Catalogue were as follows:

YEAR	AMOUNT
1998	$ 2,066,000
1997	$ 1,975,000
1996	$ 1,825,000
1995	$ 1,768,000
1994	$ 1,342,000

Annexed hereto and incorporated herein by reference as Plaintiffs' Exhibit 11 is a table further delineating sales and advertising figures for Victoria's Secret Catalogue.

20. It is my understanding that, under a mark undeniably similar to that of VICTORIA'S SECRET, defendants sell low-quality lingerie, pornographic videos, various "sex toys" and other "adult"

novelty items. (See Lyons Aff. at ¶ 10; Pl. Exh. 6).

21. I believe that defendants' lack of good faith in choosing a name for their business is obvious, since they testified that they were aware of Victoria's Secret and the fact that it sells lingerie (Victor Moseley Dep., p. 54, l. 24-25; p. 55, l. 1-15). Indeed, their "short list" of names included more than one potentially infringing use--they also considered using the name "Adult Toys Are Us" to designate their store. (Victor Moseley Dep. at p. 57, l. 1-8).

22. In bringing this lawsuit, Victoria's Secret is trying to avoid the very damage Mr. Moseley informed us has already occurred. As he stated in his deposition testimony, prior to the institution of this lawsuit, his clients remarked upon the similarity between the name of defendant's store and that of VICTORIA'S SECRET. (Victor Moseley Dep. at 58, l. 7-15). Clearly, the danger of dilution of the VICTORIA'S SECRET Mark is very real.

23. As my colleagues, Timothy B. Lyons and James J. McGinty stated in their affidavits, I, too, object to Victor's Little Secret's trading off on our famous VICTORIA'S SECRET Mark to sell its objectionable wares. The mere association of the VICTORIA'S SECRET Mark with such inferior and salacious goods irreparably injures and tarnishes the image and reputation of the VICTORIA'S SECRET Mark as well as dilutes its distinctiveness as a symbol of quality.

WHEREFORE, I respectfully request that this Court find that there is no genuine issue of fact regarding defendants' unauthorized use of our famous VICTORIA'S SECRET Mark to sell its goods, and that this Court find and hold that the use of the VICTORIA'S SECRET Mark by defendants violates our trademark rights, and should be enjoined.

James Pozy

Sworn to before me this 4th
day of ~~April~~ MAY, 1999.

Susan E. Soltesz
Notary Public MCE: 8-6-02

[The following exhibits are not reproduced in the Joint Appendix but are available in the Record at R.33:]

Exhibit 10 (Printout of Victoria's Secret website)

Exhibit 11 (Color copy of Victoria's Secret mailing label)

Exhibit 12 (Table: Sales/Advertising of Victoria's Secret catalogue)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

- -x

V SECRET CATALOGUE, INC.
VICTORIA'S SECRET STORES, INC. and
VICTORIA'S SECRET CATALOGUE, Inc.,

Plaintiffs,

v.

VICTOR MOSELEY and
CATHY MOSELEY
d/b/a VICTOR'S LITTLE SECRET
(formerly VICTOR'S SECRET),

Defendants.

Civil Action
No. 3:09cv-395-S
(Charles R. Simpson, C.J.)

- -x

AFFIDAVIT OF FRANK J. COLUCCI

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

FRANK J. COLUCCI, being duly sworn, deposes and says:

1. I am a member of the firm of Colucci & Umans, attorneys of record for plaintiffs in the above-referenced civil action. As such, I am fully familiar with the facts and circumstances involved in this case.

2. For the past 17 years, I have served as intellectual property counsel to plaintiffs. During this time, I have been actively involved in the policing and enforcement of Victoria's Secret's intellectual property rights, including its trademarks.

3. We first became involved in this matter on February 16, 1998, when a member of the risk assessment team at Victoria's

Secret Stores, Inc. sent us a copy of an advertisement for Victor's Secret faxed to them by Colonel John Baker.[1] Upon receiving this information and after consultation with plaintiffs, on February 25, 1998 our firm sent a letter to the Moseleys demanding that they immediately cease the use of the infringing Victor's Secret designation in connection with their adult sex shop. Attached hereto and incorporated by reference herein as Plaintiffs' Exhibits 13 and 14, respectively, are copies of said fax from Colonel Baker, as well as our cease and desist letter to the Moseleys dated February 25, 1998.

4. At the time we sent the Moseleys a cease and desist letter, neither my firm nor Victoria's Secret had any intention of pursuing litigation. Indeed, by sending the letter, we hoped to resolve the matter amicably--and our subsequent conversations with Mr. Moseley seemed to indicate that this was the course we would take.

5. In ensuing telephone conversations between Mr. Moseley and my firm, Mr. Moseley indicated a similar wish to settle this matter amicably; to that end, we discussed changing the name

[1] Colonel Baker, the Staff Judge Advocate for the U.S. Army Armor Center and Fort Knox, had been dismayed to see an advertisement in Inside the Turret, a Fort Knox newspaper, for the grand opening of Victor's Secret, a self-proclaimed purveyor of "adult novelties". Defendants' use of the name Victor's Secret to promote such unsavory merchandise alarmed Colonel Baker--both as an attorney and as the husband and father of Victoria's Secret customers. Baker Aff. at ¶ 6-7. He therefore called Victoria's Secret to inform them of defendants' infringement, and, in response to Victoria's Secret's request, faxed them a copy of the advertisement appearing in Inside the Turret.

of his store. However, without notifying my firm, the Moseleys changed the name of their store to VICTOR'S LITTLE SECRET by merely adding the word "Little" over the hand logo. Since, the word "Little" appears significantly smaller than the name VICTOR'S SECRET; this inconsequential change did little to alter the mark or its potential effect on consumers, as indicated below:

VICTOR'S LITTLE SECRET
• Intimate Lingerie • Leather Outfits
• Romantic Lighting • Pagers
• Lycra Dresses • Adult Novelties/Gifts
We Special Order
Register To Win....
$75 Gift Certificate
Lingerie Sizes Small thru 4x
Houchens Plaza, Elizabethtown • 737-5231
Mon-Thur 10am-6pm, Fri-Sat 10am-9pm
and lo more!

6. In a follow-up letter to the Moseleys, my firm requested copies of the advertising, promotional materials and signage used by the Moseleys as well as photographs of the store. Attached hereto and incorporated herein by reference as Plaintiffs' Exhibit 15 is a copy of this letter. The Moseleys outright refused to provide any further information to us. When we realized that our attempts to amicably resolve this matter on behalf of Victoria's Secret were futile, we commenced this civil action on June 26, 1998.

7. Notwithstanding the commencement of this civil action, advertisements for VICTOR'S LITTLE SECRET have continued to appear on radio stations such as WRZI, Star 101.5, and in newspaper publications such as the Central Kentucky Weekly Shopper, the News Enterprise and online on Weekly Shopper.com. (V. Moseley Dep. at p. 33, l. 11-p. 36, l. 12). In fact, Mr. Moseley testified that he plans to continue advertising VICTOR'S LITTLE SECRET in all of these media. (V. Moseley Dep. at p. 38, l. 6-10).

8. Despite our best efforts to resolve this matter without costly, time-consuming litigation, defendants left us no choice but to file this lawsuit. Moreover, Moseleys' actions make it clear that they intend to continue to benefit from their sex shop's association with Victoria's Secret, to the detriment of the plaintiffs, until they are legally barred from doing so.

WHEREFORE, I respectfully request that this Court find that there is no genuine issue of fact regarding defendants' use of VICTOR'S LITTLE SECRET and that such use violates Victoria's Secret's trademark rights in and to its famous VICTORIA'S SECRET ~~mark~~ and name, and should be enjoined.

Frank J. Colucci

Sworn to before me this
6th day of May, 199[illegible].

Courtney W. Monahan
Notary Public

COURTNEY WILSON MONAHAN
Notary Public, State of New York
No. 4966364
Qualified in New York County
Commission Expires Oct. 7, 2000

OFFICE OF THE STAFF JUDGE ADVOCATE
US ARMY ARMOR CENTER & FORT KNOX
FORT KNOX, KENTUCKY 40121
FAX NUMBER DSN 464-2488
COMMERCIAL (502) 624-2488

(212)935-5728

RECEIVED
LUCCI & HUMANS
FEB 17 1998

TO Victoria's Secret — FILE D68 [illegible]
ATTENTION Security/Legal Dept
FAX NUMBER (614) 577-7036

FROM COL John Baker
DATE 12 Feb 98
TELEPHONE NUMBER TO CONFIRM FAX
DSN 464-1602
COMMERICAL (502) 624-1602

NUMBER OF PAGES 2 (INCLUDING COVER PAGE)

Frank
REMARKS Per conversation you requested.
We received this and thought
you might want to see this.
Meredith

HOME OF MOUNTED WARFARE

GRAND OPENING

Just in time for Valentine's Day!

VICTOR'S SECRET

•Intimate Lingerie *for every woman*
•Romantic Lighting
•Lycra Dresses
•Pagers
•Adult Novelties/Gifts

Houchens Plaza, Elizabethtown • 737-5231

Hours: Mon.-Thurs. 10 am-6 pm; Fri. & Sat. 10am-9pm

BEST AVAILABLE COPY

COLUCCI & UMANS

MANHATTAN TOWER
101 EAST 52ND STREET
NEW YORK, NEW YORK 10022-6018

TELEPHONE (212) 935-5700
FACSIMILE (212) 935-5728
email@colucci-umans.com

WESTCHESTER OFFICE
970 WHITE PLAINS ROAD
SCARSDALE, NEW YORK 10583
TELEPHONE (914) 472-1500
FACSIMILE (914) 472-1551

FRANK J. COLUCCI, P.C.
KENNETH R. UMANS, P.C.
COURTNEY WILSON MONAHAN, P.C.
THOMAS A. KAIN
RAYMOND J. GLYNN
W. BRANT MOSSOP
SUSAN B. JACOBSON
GREGORY J. COLUCCI
RICHARD P. JACOBSON
BROOKE J. ERDOS*
ERIN S. HENNESSY*
RICHARD P. GEORGET
G. MATHEW LOMBARD

OF COUNSEL
NOTARO & MICHALOS P.C.

*LEGAL ASSISTANT

February 25, 1998

VIA FEDEX

Mr. Victor Mosley
#20 300 Sycamores Street
Houchens' Plaza
Elizabethtown, Kentucky 42701

Re: Our File D68-003

Dear Mr. Mosley:

We are Intellectual Property Counsel to The Limited, Inc., including its wholly-owned subsidiaries Victoria's Secret Stores and Victoria's Secret Catalogue (collectively "Victoria's Secret").

Victoria's Secret owns and operates the well-known VICTORIA'S SECRET stores located throughout the United States as well as the well-known VICTORIA'S SECRET catalog world-wide. Victoria's Secret has been in business in the United States for many years and the name VICTORIA'S SECRET has become exclusively associated in the minds of the public with our client and its merchandise.

In addition, VICTORIA'S SECRET is a registered trademark with the United States Patent and Trademark Office. Victoria's Secret also owns the VICTORIA'S SECRET catalog which is distributed throughout the United States. As a result, the VICTORIA'S SECRET name and trademark has acquired widespread public recognition and goodwill in the United States and is an extremely important and valuable asset of our client.

We have recently learned that you and Ms. Cathy Mosley own and operate a retail business named VICTOR'S SECRET which sells lingerie, dresses and novelties.

In our opinion and that of our client, your choice

of VICTOR'S SECRET for a retail clothing store, in particular a store that specializes in lingerie, is likely to cause confusion with our client's well-known VICTORIA'S SECRET mark and name by suggesting a connection or association between you and Victoria's Secret. In addition, your use of VICTOR'S SECRET is likely to dilute the distinctiveness of our client's VICTORIA'S SECRET mark and name.

Accordingly, we request that you discontinue any and all use the mark VICTOR'S SECRET and any variations thereof immediately.

We look forward to hearing from you promptly in this matter in any event, no later than by Friday, February 27, 1998. Otherwise, we shall have no alternative but to take all appropriate further action to protect Victoria's Secret's rights.

Very truly yours,

G. Mathew Lombard

GML:he

[Exhibit 15]

COLUCCI & UMANS

MANHATTAN TOWER
101 EAST 52ND STREET
NEW YORK, NEW YORK 10022-6018

TELEPHONE (212) 935-5700
FACSIMILE (212) 935-5728
email@colucci-umans.com

WESTCHESTER OFFICE
670 WHITE PLAINS ROAD
SCARSDALE, NEW YORK 10583
TELEPHONE (914) 472-1800
FACSIMILE (914) 472-1881

FRANK J. COLUCCI, P.C.
KENNETH R. UMANS, P.C.
COURTNEY WILSON MONAHAN, P.C.
THOMAS A. KAIN
RAYMOND J. GLYNN
W. BRANT MOSSOP
SUSAN S. JACOBSON
GREGORY J. COLUCCI
RICHARD P. JACOBSON
BROOKE J. ERDOS*
ERIN S. HENNESSY*
RICHARD P. GEORGET
G. MATHEW LOMBARD

OF COUNSEL
NOTARO & NICHALOS P.C.

*LEGAL ASSISTANT

March 20, 1998

VIA FEDEX

Mr. Victor Mosley
#20 300 Sycamores Street
Houchens Plaza
Elizabethtown, Kentucky 42701

Re: Our File D68-003

Dear Mr. Mosley:

Further to our letter of February 25th and our subsequent telephone conversations, in order for Victoria's Secret to consider whether your proposed name change to VICTOR'S LITTLE SECRETS and Hand Design would be acceptable, it must have the following information:

1) photographs of the interior and exterior of your store;

2) a drawing, illustration or sketch of the manner in which you propose to use the name VICTOR'S LITTLE SECRETS and Hand Design on store signs, business cards, shopping bags, etc., including any advertisements, i.e., newspaper or telephone yellow pages advertisments; and

3) a list of the products sold in your store, specifically, the type of lingerie that your store sells (i.e., novelty lingerie or traditional lingerie) as well as samples.

We look forward to receiving the requested information at your earliest convenience so that we may forward it to Victoria's Secret for its review.

Sincerely yours,

Frank J. Colucci

FJC/GML:ae

VICTOR'S SECRET

A-1
VAC
VICTOR'S SECRET

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

- -x

V SECRET CATALOGUE, INC., :
VICTORIA'S SECRET STORES, INC., and
VICTORIA'S SECRET CATALOGUE, INC., :

Plaintiffs, :

v. : Civil Action No.
3:09cv-395-S
(Charles R. Simpson, C.J.)

VICTOR MOSELEY and :
CATHY MOSELEY
d/b/a VICTOR'S LITTLE SECRET :
(formerly VICTOR'S SECRET),

Defendants. :

- -x

AFFIDAVIT OF SCOTT D. JOHNSON, Ph.D.

STATE OF KENTUCKY)
: ss.:
COUNTY OF JEFFERSON)

SCOTT D. JOHNSON, being duly sworn, deposes and says:

1. I am Chairman of the Department of Marketing at the University of Louisville's College of Business and Public Administration. I hold a Ph.D. in Marketing from Michigan State University, an M.B.A. (with a marketing concentration) from the University of Minnesota, and a B.A. from the University of Minnesota. Annexed hereto and incorporated by reference herein as "Appendix A" is a copy of my curriculum vitae.

2. I was retained by plaintiffs' attorneys, Colucci & Umans, to evaluate how the publicity garnered by Victoria's Secret, coupled with its advertising expenditures, impact the brand recognition or "fame" of the VICTORIA'S SECRET Mark.

3. In making this evaluation, I examined Victoria's Secret's national advertising expenditures and Hardin County advertising expenditures, as well as the number of VICTORIA'S SECRET catalogs mailed to residents of Hardin County, the presence of two VICTORIA'S SECRET retail stores in Louisville, and the publicity received by Victoria's Secret. My conclusions are as follows:

Victoria's Secret's Advertising Expenditures

4. Victoria's Secret's advertising expenditures in Kentucky and in Hardin County have been considerable, as evidenced by the affidavits of James Pozy and James J. McGinty, which I have reviewed. These figures do not, however, reflect the total effort made by Victoria's Secret to promote its VICTORIA'S SECRET Mark in Hardin County. It is difficult to quantify the impact Victoria's Secret's national advertising expenditures have had on the public recognition of the VICTORIA'S SECRET Mark in Hardin County. However, in a study of the correlation between Victoria's Secret store sales in the Louisville area and Victoria's Secret's national advertising expenditures, I concluded that national advertising expenditures are significant predictors of sales revenues in the two Louisville stores.

5. In my analysis, I examined the data provided in the affidavit of James J. McGinty delineating the total store sales and total advertising expenditures for VICTORIA'S SECRET stores during 1989-1998 to test the strength of their

relationship. My findings reveal a strong correlation between the two, as measured by the Pearson product-moment coefficient (r), a commonly used statistical device. If the Pearson product-moment coefficient equals zero (r = 0), there is no correlation between the two variables. If the Pearson product-moment coefficient approaches one (r = 1), the two data sets are highly related. My computation of the correlation between the total sales and total advertising figures for VICTORIA'S SECRET stores resulted in a Pearson product-moment coefficient of .809 (r = .809). In what is known as a regression analysis, I also measured the significance of this correlation, and found a significance level of .005. This means that there is less than 1% chance that such a relationship would occur randomly. Thus, sales and advertising of VICTORIA'S SECRET stores are very closely linked.

6. I performed a similar analysis of the total store sales for the Louisville area during 1994-1998 with national advertising expenditures for VICTORIA'S SECRET stores during that same period. My computation revealed that these two sets of data are also significantly correlated, with a Pearson product-moment coefficient of .932 (r = .932) and a significance level of .021. Once again, this reveals that national advertising expenditures by Victoria's Secret have a significant impact on the consumer awareness, and therefore sales, of VICTORIA'S SECRET products in the Louisville region, including Hardin County.

7. In addition, since Victoria's Secret's catalog

sales have amounted to $30 million in Kentucky in the past five years, this further supports my conclusion that most of the residents of Hardin County, Kentucky are aware of Victoria's Secret.

Victoria's Secret Store Sales

8. There are two VICTORIA'S SECRET stores located in Louisville; one, in the Mall St. Matthews, has been open for seventeen years, and the other, in Oxmoor Center, has been open for fourteen years. The two Louisville stores, with combined sales of $4,634,000 in 1998, perform significantly above the national average for sales in VICTORIA'S SECRET stores. In 1998, total sales for 750 stores were $1,507,000,000, or $2,009,333 per store. Doubling the per store national average and comparing it to the two Louisville stores reveals that sales at the Louisville stores are 15% higher than the national average. Clearly, Victoria's Secret enjoys a strong, positive brand recognition among consumers in the region.

9. The Mall St. Matthews is the largest enclosed mall in the State of Kentucky, with about one million square feet of retail space, and the Oxmoor Center is almost as large, at 917,000 square feet of space. The larger the retail space, the more it is likely that consumers will travel long distances to shop at them; this is known as the retail gravitation theory. The variety of stores, the size of stores and the busy atmosphere offered by Oxmoor Center and Mall St. Matthews creates a significant attraction for those living within an easy, 50-minute

commute, such as shoppers in Elizabethtown.

10. The presence of the two VICTORIA'S SECRET stores at two of the largest retail centers in Kentucky serves to further publicize and validate the VICTORIA'S SECRET Mark in the eyes of regional consumers. In my opinion, it is almost inconceivable that most Hardin County residents have not visited either of these two malls, and encountered Victoria's Secret.

Victoria's Secret Catalog Sales

11. The distribution of the VICTORIA'S SECRET catalog to Hardin County residents also serves to advertise and promote the VICTORIA'S SECRET Mark. According to the Kentucky State Data Center, there are 31,481 households in Hardin County. In 1998, 39,000 Victoria's Secret catalogs were distributed in Elizabethtown, Kentucky alone. (See Pozy Aff.). Thus, 1.24 catalogs per household were distributed on a countywide basis. It is statistically likely that most females would have received at least one VICTORIA'S SECRET catalog in 1998. Moreover, each catalog possesses an additional "passalong" value. Catalogs like Victoria's Secret often remain in view long after their initial arrival in the mail, and are passed along from friend to friend, or displayed in beauty parlors, hair salons and the like. This unquantifiable advertising further serves to promote the VICTORIA'S SECRET Mark.

Publicity Received by Victoria's Secret

12. Publicity relating to Victoria's Secret also serves to create a high level of awareness of the VICTORIA'S

SECRET mark among consumers. Publicity is valuable because it generally comes from an independent source that is often perceived as very credible since that source is not being paid to deliver the message. As stated by Victoria's Secret, nearly nine hundred articles appeared about Victoria's Secret in the four-month period leading up to the date the Moseleys opened their store. Moreover, VICTORIA'S SECRET models and merchandise have been profiled on several national television shows and in magazine articles. This adds to the credibility, fame and consumer recognition of the VICTORIA'S SECRET Mark; indeed, with such extensive national coverage, it is difficult to imagine that anyone in Hardin County is unfamiliar with Victoria's Secret.

Conclusion

13. Valuing brand equity (or the value of a trademark) built up over the years by a company is a difficult task. However, brand loyalty and brand awareness are two major components of brand equity. The fact that VICTORIA'S SECRET is among the top ten most recognized brands in the country suggests the enormous value of the VICTORIA'S SECRET Mark. (Lyons Aff. at ¶ 9). While the advertising expenditures in the State of Kentucky and in Hardin County are significant considering the population, it reflects only the quantifiable effort by Victoria's Secret to promote its mark in the region. As demonstrated above, Victoria's Secret's less quantifiable efforts, such as its catalog distribution, public relations, national advertising, and mall presence, all serve to create a

strong awareness and positive impression of the VICTORIA'S SECRET Mark throughout the United States, including Hardin County, Kentucky.

Dated: Louisville, Kentucky
May 6, 1999

Scott D. Johnson

Subscribed and sworn to me this
6 day of May, 1999

Brennen S. Wilson
Notary Public 9-2002

Scott D. Johnson, Ph.D.

ADDRESS

University
College of Business & Public Administration
University of Louisville
Louisville, Kentucky 40292-0001

Home
4129 Brentler Road
Louisville, KY 40241-1520
502-426-5801

Telephone: (502) 852-4848
Fax: (502) 852-7672
E-mail: scott@louisville.edu

PERSONAL INFORMATION

Married with 4 children, US citizen

EDUCATION

Ph.D., Michigan State University (1990) in Marketing; Minor Subject Areas: International Business and Advertising
M.B.A., University of Minnesota (1981), Marketing concentration
B.A., University of Minnesota (1977), Majors: Philosophy and German

LANGUAGES

English (native) and German (conversational)

ACADEMIC HONORS

Phi Beta Kappa; B.A. magna cum laude

RESEARCH INTERESTS

Recommendation-Based Decision Making, The Role of Prior Knowledge in Consumer Decision Heuristics, Environmental Marketing, and The Simulated Business Environment

MBA COURSES TAUGHT

Marketing Management, Integrated MBA (IMBA) - Marketing Foundations Module, Business and Society

UNDERGRADUATE COURSES TAUGHT

Marketing Problems (capstone case course), Retailing, Market Promotion, Advertising, Consumer Behavior, Marketing Research, Principles of Marketing

PROFESSIONAL ASSOCIATION MEMBERSHIP

American Marketing Association (National), 1982 - present; American Marketing Association, Louisville Chapter, 1991 - present; The Academy of Marketing Science, 1986 - present; Association for Consumer Research, 1990 - 1995; Southern Marketing Association, 1993-1996.

PROFESSIONAL DEVELOPMENT CONFERENCES/WORKSHOPS

AACSB External Resource Development Seminar, Washington, D.C. November 1998.
AACSB Mid Continent East Regional Meeting, Minneapolis, MN, Sept 1998.
AACSB Undergraduate Program Seminar, Charlottesville, VA, February, 1998.
AACSB, Annual Meeting, Boston, MA, April, 1997.
AACSB, Continuous Improvement Symposium, St. Louis, September, 1996.
Distance Education Workshop, Teletraining Institute, Louisville, November, 1995.
AACSB, Teaching Effectiveness Workshop, Philadelphia, February, 1993.
12th Faculty Consortium, Personal Selling and Sales Management, American Marketing Association, Memphis, July, 1992.

PUBLICATIONS

Academic Journal Articles

Kemelgor, Bruce H., Scott D. Johnson, and S. Srinivasan (under review), "Drivers for Organizational Change: Technology, Competition, and the Workplace," *Journal of Managerial Issues.*

Johnson, Scott D., S. Srinivasan, and Bruce H. Kemelgor (1998), "Organizational Structure and the Role of Empowered Teams in U.S. Business Schools: An Empirical Asessment," *Journal of Education for Business*, May/June, 280-283.

Duhan, Dale F., Scott D. Johnson, James B. Wilcox, and Gilbert D. Harrell (1997), "Influences on Consumer Use of Word-of-Mouth Recommendation Sources." *Journal*

of the Academy of Marketing Science, Vol. 25, No. 4, June, 283-295.

Johnson, Scott D., Denise M. Johnson, and Peggy A. Golden (1997), "Multinational Business Gaming: Is Gender Important?," *Journal of Teaching in International Business*, Vol. 8, No. 4, 65-82.

Johnson, Scott D., Denise M. Johnson, and Peggy A. Golden (1996), "Enhancing Perceived Learning within the Simulated Marketing Environment," *Marketing Education Review*, Vol. 6, No. 2 (Summer), 1-9.

Magill, Sharon, Scott D. Johnson, Robert M. Barker, and Jeffrey S. Bracker, (1996), "The Bottom-up Mission Process in Professional Service Organizations: A Case Study," *Journal of Strategic Change*, Vol. 5, No. 2 (March-April), 63-73.

Johnson, Denise M. and Scott D. Johnson (1993), "One Germany, But is there a Common German Consumer? East-West Differences for Marketers to Consider," *The International Executive*, Vol. 35, Number 3, May/June, 211-228.

Zinn, Walter and Scott D. Johnson (1990), "The Commodity Approach in Marketing Research - Is it Really Obsolete?," *Journal of the Academy of Marketing Science*, Volume 18, Number 4., 345-353.

Page Jr., Thomas J., Pat Daugherty, Dogan Eroglu, David E. Hartman, Scott D. Johnson and Doo-Hee Lee (1988), "Measuring Emotional Response to Advertising: A Comment on Stout and Leckenby," *Journal of Advertising*, Volume 17, Number 4, 49-52.

Book Chapters

Johnson, Scott D. and Denise M. Johnson (1995), "Eco-Attitudes and Eco-Behaviors in the New German States: A 1992 Perspective," in *Advances in Environmental Marketing*, New York: The Haworth Press, 101-118.

Book Reviews

Johnson, Scott D. (1997), Book Review of *Culture Clash: Managing in a Multicultural World*, Chicago, IL.: NTC Business Books, in *Journal of Consumer Marketing*, Vol. 14, Number 1, 94-95.

Conference Proceedings

Johnson, Scott D. (1999), "Perceived Commerciality of Direct Selling Parties, Proceedings of the American Marketing Association, Marketing Educators's Conference Proceedings, forthcoming.

O'Loughlin, Michael R. and Scott D. Johnson (1996), "Strategic Issues for G.E. Appliance in Eastern Europe: A Case Study," *Proceedings of the 4th Annual Conference on Marketing Strategies for Entering Central and Eastern Europe*, December 4-6, Vienna, Austria, editors, Petr Chadraba and Reiner Springer.

Johnson, Denise M., Scott D. Johnson and Gerrit P. van Nederpelt (1994), "Generalized Attitudes Toward Advertising in Newly Emerging Market Economies: A Comparative Analysis of East and West German Consumers," *Proceedings of the 2nd Annual Conference on Marketing Strategies for Entering Central and Eastern Europe*, December 1 & 2, Vienna, Austria, editors, Petr Chadraba and Reiner Springer.

1992 International Travel Grant, funded by the International Committee, School of Business, UofL.

1992 Graduate School Research Funding; Provost Office Research Funding; Department of Marketing Research Funding; School of Business Research Funding, UofL.

PRESENTATIONS

"Perceived Commerciality of Direct Selling Parties," at the American Marketing Association Marketing Educators's Conference, San Francisco, August , 1999.

"Cooperative Educational Opportunities within the College of Business and Public Administration," October 9, 1998, [illegible]

BEST AVAILABLE COPY

OTHER SERVICE ACTIVITIES/AWARDS

Hospice of Louisville, Development Committee Member, 1997-present
UofL College of Business and Public Administration Service Award, 1993 and 1997.
Metro United Way: Allen Society Community Service Award Winner, 1997.
UofL Faculty Senator representing the CBPA, 1997-2000.
UofL Logistics Initiative Task Force and Recruiting Committee, 1997-1998.
MBA Recruiting in Paris, France, and Berlin, Germany, in conjunction with "MBA Events," December 1997.
UofL Metro United Way Steering Committee Co-Chair, 1996 Campaign.
Louisville Metro United Way, Communications Committee, 1995 - 1997.
Lincoln Elementary School Family Resource Center Council Member, 1994-1995.
Bicentennial Campaign Marketing Advisory Committee, University of Louisville, 1994-1995.
Phi Beta Kappa Association of Kenruckiana, Secretary, Louisville, Kentucky, 1992-present.
CBPA Computing Committee, 1994-95.
Mission/Vision Task Force Committee, College of Business and Public Administration, UofL, 1993.
Metro United Way Liaison for the College of Business and Public Administration, UofL, 1992-present.
University Employee Suggestion Committee, University of Louisville, 1992-1994.
Student Awards Committee, College of Business and Public Administration, UofL, 1991-1995.
Rauch Planetarium Community Advisory Committee, Louisville, Kentucky, 1991-94.
"Ask the Experts" column editor, Kentuckiana Business Guide, 1993.
Bell South Consumer Advisory Board, Bell South Advertising and Publishing, Atlanta, Georgia, 1991-92.
Numerous television news appearances and newspaper interviews in conjunction with marketing related issues.

BUSINESS CONSULTATION

Mafcote Industries, Expert Witness, Trademark opinion
Bank of Louisville - Shopper Study
Coopers & Lybrand - Atlanta, Market Scanning Study
Bell South - Market Studies
Bullet County Tourism Commission - Development Studies
Harry K. Moore Co. - Database Development
Holland Income Tax/Middleman & Reutlinger - Expert Witness, Trademark opinion
Mapping Insights, Inc. - Marketing Planning
Wilkerson & Associates - Research Reporting
Horizon Research International - Conjoint Analysis Study

ACADEMIC POSITIONS

1998 - present
Associate Professor of Marketing
Chairman - Department of Marketing
College of Business and Public Administration, University of Louisville

1997 - 1998
Associate Professor of Marketing
Marketing Discipline Lead (1996-1997)
College of Business and Public Administration, University of Louisville

1991-1997
Assistant Professor of Marketing
College of Business and Public Administration, University of Louisville

1988-1991
Assistant Professor of Marketing
Grand Valley State University, Allendale, Michigan

1984-1988
Graduate Assistant and Research Assistant
Michigan State University, East Lansing, Michigan

1981-1984
Instructor of Marketing
Mankato State University, Mankato, Minnesota

updated May 4, 1999

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

V SECRET CATALOGUE, INC. VICTORIA'S SECRET STORES, INC. and VICTORIA'S SECRET CATALOGUE, INC., Plaintiffs, v. VICTOR MOSELEY and CATHY MOSELEY d/b/a VICTOR'S LITTLE SECRET (formerly VICTOR'S SECRET), Defendants.	:	Civil Action No. 3:09cv-395-S (Charles R. Simpson, C.J.)

AFFIDAVIT OF COLONEL JOHN E. BAKER

STATE OF KENTUCKY)
: ss.:
COUNTY OF HARDIN)

JOHN E. BAKER, being duly sworn, deposes and says:

1. I am the Staff Judge Advocate for the U.S. Army Armor Center and Fort Knox, located in Fort Knox, Kentucky. I have served as an attorney since 1979, and am admitted to the United States Supreme Court, the United States Court of Appeals for the Armed Forces, the United States Army Court of Criminal Appeals, the United States District Court for the District of Maine, and the Maine Supreme Judicial Court.

2. In addition to my experience as a practicing attorney, I have served as a professor or instructor at the Walter Reed Army Medical Center, the United States Military Academy at

West Point and Florida State University. I have also authored several academic articles, and served as a Law Review editor at my law school.

3. During my twenty years as an attorney, I have been exposed to and gained a certain degree of knowledge of intellectual property law, particularly while serving as a staff attorney at the United States Military Academy.

4. Inside the Turret is a weekly publication distributed to residents of the U.S. Army Armor Center and Fort Knox. Inside the Turret is published by and contains much of the same editorial and advertising content as the News-Enterprise, a newspaper distributed to residents of Elizabethtown, Kentucky.

5. While reading the February 12, 1998 edition of Inside the Turret, I came across an advertisement announcing the grand opening of Victor's Secret. The advertisement appeared as follows:

6. My immediate impression upon viewing this ad was to note the very close similarity of Victor's Secret to VICTORIA'S SECRET and to conclude that the similarity was far too close. As

an attorney with knowledge of intellectual property law, I was both professionally and personally offended by defendants' use of a bona fide, reputable company's trademark to promote defendants' unwholesome, tawdry merchandise--that is, "adult" novelties and gifts.

7. Moreover, since my wife, Lynn, and seventeen-year-old daughter, Molly, both shop at VICTORIA'S SECRET, I was further dismayed by defendants' effort to associate itself with, trade off on the image of, and in fact denigrate a store frequented by members of my family.

8. In subsequent conversations with my family, my friends and my coworkers, they, too, remarked on the similarity between Victor's Secret and VICTORIA'S SECRET, and several commented that defendants' use of Victor's Secret was unfair and improper.

9. Because I was so offended by what I perceived as a potentially damaging use of a trademark similar to that of VICTORIA'S SECRET, on February 12, 1998 I contacted plaintiffs' offices in Columbus, Ohio and, at their request, I faxed the ad to Victoria's Secret Stores, Inc. on that same day.

10. About a month or two after my communications with Victoria's Secret, I observed that Victor's Secret had changed its name to Victor's Little Secret. In my personal opinion, this minor and inconsequential name change added insult to injury. Defendants' store, with a name so similar to VICTORIA'S SECRET, is likely to capture the attention of consumers. It is my personal

opinion that it is unjust that a reputable company such as VICTORIA'S SECRET is being exploited in this manner.

11. This affidavit reflects my personal views and opinions. It does not necessarily reflect views of the U.S. Army Armor Center or the Department of the Army, which, as far as I know, has taken no position on this matter.

John E. Baker
Colonel, U.S. Army

Sworn to before me this
9th day of April, 1999

Notary Public

Carol J. Padgett, Notary Public
State at Large
Kentucky
My Commission Expires Nov. 30, 2002